S.B. CIVIL WRIT PETITION NO.712/2005

Shankar Lal & Ors. vs. Smt. Padma Devi and ors.

Date : 23.5.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. S Saruparia, for the petitioner.
Mr. L Kawadia, for the respondents.

- - - - -

Heard learned counsel for the parties.

The petitioner has challenged the order dated 6.11.2004 by which the petitioner/defendant's application for amendment of the written statement has been rejected by the trial court.

According to learned counsel for the petitioner, in a suit filed by the non-petitioner/plaintiff, an interim order to maintain status quo was passed by the trial court on 9.5.2001. The petitioner though defendant submitted a contempt petition before the trial court in the plaintiff's suit for alleged violation of the order of the court by the plaintiff. This contempt petition was filed on 2.6.2001. The petitioner submitted written statement on 19.2.2002 and thereafter submitted another contempt petition on 2.8.2002. The contempt petition was dismissed by the trial court vide order dated 20.7.2004.

According to learned counsel for the petitioner, the contempt petition was dismissed by the trial court on the

ground that the petitioner, if will prove his case in the suit, he can get the relief in the suit.

The petitioner thereafter submitted an application for amendment of the written statement on 12.8.2004 for seeking relief of mandatory injunction against the plaintiff. The petitioner's application was opposed by the plaintiff by saying that by this amendment, the petitioner in fact wants to submit a counter claim for which there is a specific provision under Order 8 Rule 6A CPC. It was also submitted that the petitioner submitted the application after inordinate delay and failed to show any due diligence for not moving the application before the start of the trial of the suit and, therefore, the amendment cannot be allowed.

Learned counsel for the petitioner submits that in the facts mentioned above, it is clear that the petitioner had no option but to file amendment application in the written statement after rejection of the petitioner's application for relief under the proceedings initiating for committing contempt by the plaintiff. It is also submitted that the petitioner was pursuing the remedy in the Court.

Learned counsel for the respondent/plaintiff vehemently submitted that there is no jurisdictional error in the impugned order dated 6.11.2004 because by this order, the trial court has only decided the issue whether the amendment can be allowed or not within the jurisdiction of the trial court. Therefore, in view of the judgment of this

Court delivered by Jaipur Bench in the case of Ghasi Ram @ Ghisa vs. Addl. District Judge NO.1, Sikar & Ors. reported in 2004(2) DNJ (Raj.) page 584, the order cannot be interfered by exercising jurisdiction under Article 227 of the Constitution of India as this Court held that the object is to give finality to the decision at the stage. This Court further observed that this Court cannot assume unlimited prerogative to correct all species of hardship or wrong decisions while exercising power under Article 227 of the Constitution of India and it must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice where grave injustice would be done unless this Court interferes in the matter.

I have considered the submissions of learned counsel for the parties.

It is clear from the reasons given in the impugned order that the petitioner/defendant was perusing a remedy before the court of law in this very suit proceedings by moving applications for punishing the plaintiff. These applications were filed on 2.6.2001 and 2.8.2002. These applications were dismissed only on 28.7.2004. Thereafter, the petitioner on 12.8.2004 without any further delay, submitted a application for amendment of written statement. The petitioner had a right to seek remedy by filing suit for injunction also and for other reliefs but when the matter was before the Court and both the parties were before the Court and pursuing the remedy which according to

the petitioner was the right way of seeking remedy and when the trial court itself found that the relief can be granted to the petitioner in the suit on proving his case, then in such circumstances, it cannot be said that the petitioner has not acted with due diligence in moving the application for amendment of the written statement. By this amendment, the dispute between the parties will be settled with respect to their rival claims and there will be no need to file another suit and this certainly will avoid multiplicity of the proceedings. So far as the merits of the case of the petitioner are concerned, that can be looked into by the trial court and the trial court has jurisdiction, therefore, in these peculiar facts and circumstances, it appears that if the impugned order will not be interfered, it may result into unnecessary more litigation and it will prolong the dispute between the parties which will certainly not in the interest of justice and not in the interest of both the parties also.

In view of the above, this writ petition deserves to be allowed, hence allowed. The impugned order dated 6.11.2004 is set aside. The amendment application filed by the petitioner is allowed on payment of costs of Rs.2,000/- by the petitioner to the plaintiff within a period of six weeks from today (since there is summer vacation).

(PRAKASH TATIA), J.

S.Phophaliya